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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

WB MUSIC CORP., et al.

Plaintiffs,

v.

ROYCE INTERNATIONAL
BROADCASTING CORP., et al.,

Defendants.

) Case No: 5:16-cv-00600-JGB(SPx)

)

) **NOTICE OF MOTION AND SECOND**
) **MOTION FOR POST-JUDGMENT**
) **COSTS AND FEES; MEMORANDUM OF**
) **POINTS AND AUTHORITIES IN**
) **SUPPORT**

) **Jury Verdict: March 13, 2018**

)

) Hearing Date: May 10, 2021
) Time: 9:00 a.m.
) Judge: Hon. Jesus G. Bernal
) Courtroom: 1
)

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, on May 10, 2021, at 9:00 a.m., or as soon as the matter may be heard before the Honorable Jesus G. Bernal, United States District Judge, Central District of California, located at 3470 Twelfth Street, Riverside, California, Courtroom 1, Plaintiffs WB Music Corp., But Father, I Just Want to Sing Music, Hunterboro Music, Universal Polygram International Publishing, Inc., Sony/ATV Tunes LLC, Obverse Creation Music, Nice Hair Publishing, Party Rock Music, Yeah Baby Music, ESKAYWHY Publishing, Uh Oh Entertainment, Divine Mill Music, Fingaz Goal Music, EMI April Music Inc., Hi Mom I Did It, Chebra Music, and Universal Music Corp. (collectively “Plaintiffs”) will and hereby do move pursuant to Section 505 of the Copyright Act (17 U.S.C. § 505), Rule 69(a)(1) of the Federal Rules of Civil Procedure, and Sections 685.040, 685.070 and 685.080 of the California Code of Civil Procedure for a second award of full costs, including reasonable attorneys’ fees, incurred by Plaintiffs since October 15, 2020 in their continued efforts to enforce the judgment in this case.

This Motion is made following conference of counsel pursuant to L.R. 7-3 that took place on March 22, 2021, but counsel were unable to reach resolution. This Motion is based on this Notice, the accompanying Memorandum of Points and Authorities below, the Declarations of Sharon D. Mayo and Jackson Wagener submitted herewith, the Plaintiffs’ Memorandum of Costs, the complete files and records of this action, and such other facts as the Court may require at the hearing on the matter.

Dated: April 9, 2021

ARNOLD & PORTER KAYE SCHOLER LLP

By: /s/ Sharon D. Mayo

Sharon D. Mayo

Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

It has been three years since a jury unanimously found Defendants liable for willful copyright infringement (Dkt. No. 164), and Plaintiffs have yet to receive one cent of the amount legally owed to them by Defendants. Plaintiffs have diligently pursued payment over these past few years, even taking the extraordinary step of moving to appoint a Receiver to sell Defendants' radio stations to ensure full satisfaction of the amount owed. (Dkt. No. 239.) And Defendants have been given every opportunity to pay the amount owed in an orderly and timely fashion. Instead, Defendants have engaged in a series of dilatory, underhanded tactics aimed at obstructing the Receiver's sale of Defendants' radio stations and preventing payment to Plaintiffs, the Receiver, and other creditors.

Defendants' willful campaign of obstruction and delay is still ongoing, forcing Plaintiffs to incur additional attorneys' fees and costs as they continue their attempts to collect on the now approximately \$1.7 million second amended judgment. (Dkt. No. 350, the "Judgment"). Even after Defendants yielded to the Court's orders and finally deposited \$1.7 million with the Court, they refused (and still refuse) to stipulate to the unconditional release of those funds—as if this were a "negotiation" in which Plaintiffs must provide consideration for the release of the funds that the jury, this Court, and the Ninth Circuit have determined Defendants must pay.

Plaintiffs previously moved for post-judgment fees and costs on October 20, 2020. (Dkt. No. 320.) The Court granted that motion. (Dkt. No. 337.) The first fee motion, however, captured only the attorneys' fees and costs that Plaintiffs incurred through October 14, 2020. (Dkt. No. 320.) Regrettably, Defendants' dilatory and obstructionist conduct has continued since that date, necessitating further motion practice, Court intervention, and numerous hearings. Since October 15, 2020, Defendants have filed a series of unsuccessful motions seeking to: (1) compel Plaintiffs to accept less-than-full payment of the rightful amount owed to them; (2)

1 reduce Plaintiffs’ attorneys’ fees to less than half of what Plaintiffs had requested
 2 following two years of Defendants’ “scorched earth” litigation tactics; (3) enforce an
 3 alleged “settlement agreement” that Plaintiffs never agreed to; and (4) terminate the
 4 Receivership and enjoin the court-approved sale of Defendants’ radio stations,
 5 despite the fact that Plaintiffs (and other interested parties) still have not been paid.

6 Throughout the past five months, Defendants have also steadfastly sought to
 7 frustrate the Receiver’s court-approved sale of the radio stations (*see, e.g.*, Dkt. Nos.
 8 349, 354, 356, 365), disingenuously arguing that the Judgment has been “fully
 9 satisfied” (*see* Dkt. No. 366 at 2). Not only has Defendants’ conduct required
 10 additional briefing, it has also required the parties’ attendance at numerous hearings
 11 that have, on occasion, lasted nearly three hours. As a result of all of the above,
 12 Plaintiffs have incurred significant attorneys’ fees and costs since their last motion for
 13 post-judgment costs and fees was submitted; Defendants should be held accountable
 14 for these additional fees and costs.

15 By this Motion, Plaintiffs seek to recover the \$107,523.20 in attorneys’ fees
 16 and \$308.66 in costs incurred in their continued, extensive efforts to collect on the
 17 Judgment since October 15, 2020. Pursuant to section 505 of the Copyright Act and
 18 California’s Enforcement of Judgments Law (“EJL”), Plaintiffs are, as a matter of
 19 law, entitled to recover fees and costs that they have incurred in pursuing Defendants
 20 for payment of the Judgment entered in this case.

21 **II. STATEMENT OF RELEVANT FACTS¹**

22 Plaintiffs obtained a judgment against Defendants—the owners of multiple
 23 radio stations—for willful copyright infringement following a jury trial in March
 24

25 ¹ Plaintiffs’ February 26, 2019 Motion to Compel (Dkt. No. 227), the Court’s March
 26 22, 2019 Order granting the Motion (Dkt. No. 230), and Plaintiffs’ First Motion for
 27 Post-Judgment Costs and Fees (Dkt. No. 320) set forth in detail the history of this
 28 action, and Defendant Stolz’s efforts to avoid paying Plaintiffs’ Judgment, through
 October 14, 2020. To avoid repetition, the facts leading up to this Court’s November
 23, 2020 Order granting Plaintiffs’ First Motion for Post-Judgment Costs and Fees
 (Dkt. No. 320) are only briefly summarized here.

2018. The amount of that Judgment is now nearly \$1.7 million. (Dkt. No. 350.) Following a pattern of behavior that has persisted throughout the nearly five-year history of this case, Defendants have fought tooth and nail to delay resolution of these post-judgment proceedings—continuing after Plaintiffs filed their October 2020 fee motion. Defendants continue to frustrate the sale of their radio stations, going so far as to disobey this Court’s orders (and arguably committing perjury in the process (*see, e.g.*, Dkt. No. 400)), all while simultaneously refusing to release to Plaintiffs the funds that Defendants have deposited with the Court. As a result, Plaintiffs have still not been paid, these post-judgment proceedings are still ongoing, and Plaintiffs continue to incur fees and costs in the course of attempting to collect the monies rightfully due to them.

A. Defendants’ *Ex Parte* Application to Compel Plaintiffs to Accept Only Partial Payment of Amounts Due

On October 21, 2020, Defendants filed an *ex parte* application to compel Plaintiffs to accept payment of the \$1,249,563.46 owed under the judgment of August 6, 2018 or, in the alternative, for an Order to deposit with the Court such funds. (Dkt. No. 321). Defendants’ primary “concern” in filing the *ex parte* application was to prevent their radio stations from being given away in a purported “fire sale.” (Dkt. No. 321 at 6.) But this Court had already addressed and rejected the same “fire sale” premise in denying a previous *ex parte* application that Defendants had filed just the month before (Dkt. Nos. 310, 322 at 3).

Moreover, Defendants’ proffered payment as of October 21, 2020 fell far short of what they actually owed to Plaintiffs, which by that time included sanctions awarded by this Court (Dkt. Nos. 230 and 252), substantial post-judgment costs and fees awarded by the Ninth Circuit (Dkt. No. 313), and significant post-judgment attorneys’ fees and costs incurred through October 14, 2020 (Dkt. No. 320). And this Court had already made clear, in denying the *ex parte* application that Defendants had

1 filed (Dkt. No. 310), that Defendants needed to pay the full judgment “and all other
2 post-judgment costs.” (Dkt. No. 327 at 2.)

3 In short, Defendants could have had no reasonable expectation, in light of the
4 Court’s previous *ex parte* orders, that compelling Plaintiffs to accept less than what
5 they were due would stall or otherwise thwart the purported “fire sale.” But, as
6 Plaintiffs explained to the Court, given Defendants’ numerous representations that
7 they lacked the assets necessary to pay any substantial judgment against them,
8 Defendants’ demonstrated intransigence in paying the amounts owed to Plaintiffs in
9 any reasonable timeframe, and Defendants’ anticipated effort to terminate the
10 receivership once the August 6, 2018 judgment was paid, Plaintiffs were
11 understandably concerned that acceptance of the partial funds for the August 6, 2018
12 judgment would leave them unable to collect the full amount that Defendants still
13 owed to Plaintiffs. (Dkt. No. 322.) On October 29, 2020, this Court ordered
14 Defendants to deposit with the Court an amount sufficient to satisfy the August 6,
15 2018 judgment and interest accrued as of October 13, 2020, but in keeping with its
16 earlier order, yet again made clear that the Court would not terminate the receivership
17 until Defendants had paid “all other post-judgment costs.” (Dkt. No. 327.)

18 **B. Defendants’ Opposition to Plaintiffs’ Motion for Reasonable Post-**
19 **Judgment Fees and Costs**

20 On October 15, 2020, Defendants filed an objection to Plaintiffs’ First Motion
21 for Post-Judgment Fees and Costs, arguing that Plaintiffs’ Motion was untimely
22 pursuant to Local Rule 7-3. (Dkt. No. 316.) As explained in Plaintiffs’ Response, the
23 only reason Plaintiffs had filed the Motion early was to prevent yet another instance
24 of Defendants’ underhanded gamesmanship: Defendants had indicated to Plaintiffs
25 during the parties’ meet and confer that it was their intention to attempt to avoid
26 paying Plaintiffs the nearly \$240,000 of costs and fees Plaintiffs incurred during the
27 post-judgment period. (Dkt. No. 317 at 2.) Nonetheless, in an effort to avoid
28

unnecessary controversy, Plaintiffs elected to withdraw, and then refile, the Motion to moot Defendants’ objection. (Dkt. Nos. 319, 320.)

On November 11, 2020, Defendants opposed Plaintiffs’ re-filed First Motion for Post-Judgment Fees and Costs, claiming that if the Court were “inclined to award any fees” for the approximately two years of extensive post-judgment work Plaintiffs’ counsel had undertaken seeking to collect the funds rightfully due, “it should not exceed the range of \$74,056 to \$95,896.” (Dkt. No. 328 at 16.) But such a sum would not have come close to adequately compensating Plaintiffs for the substantial hours and efforts spent addressing Defendants’ “scorched earth defense and obstruction of Plaintiffs’ collection efforts.” (Dkt. No. 330 at 2.) This fight over fees and costs necessitated further briefing and consultations among Plaintiffs’ counsel. Ultimately, this Court was “particularly unimpressed” by Defendants’ arguments, refuting them one-by-one and awarding Plaintiffs more than \$230,000 in costs and fees. (Dkt. No. 337.)

C. Defendants’ Motion to Enforce a Non-Existent “Settlement Agreement”

On November 23, 2020, Defendants moved to have the Court enforce a purported “settlement agreement.” (Dkt. Nos. 338, 341.) But there was never any ambiguity—Plaintiffs had informed Defendants’ counsel in clear terms that the parties “*did not* have a settlement in principle” and should not so represent to the Court. (Dkt. No. 341 at 4. (emphasis in original)). And Defendants’ filings in the approximately two months since the alleged “settlement” had been formed made absolutely no mention of the alleged “settlement agreement”—an odd omission if Defendants had, in fact, believed a “settlement agreement” to be in place. (Dkt. No. 341 at 5–6.)

In reviewing the evidence, this Court noted that Defendants had “aggressively attempt[ed]” to satisfy the August 2, 2018 judgment for weeks after the “settlement agreement” was allegedly in place, and that “Defendants’ litigation conduct . . . in no

1 way suggests it believe[d] a settlement agreement had been reached.” (Dkt. No. 344
 2 at 2, 5.) As a result, this Court found that the parties had “clearly” not agreed on
 3 material terms of the purported “settlement agreement,” and denied Defendants’
 4 motion. (Dkt. No. 344 at 6.) Defendants’ disingenuous attempt to enforce the terms
 5 of a “settlement agreement” that “clearly” never existed forced Plaintiffs to incur
 6 substantial unnecessary costs.

7 **D. Defendants’ Repeated Attempts to Frustrate the Receivership and**
 8 **Sale of the Radio Stations**

9 On February 3, 2021, this Court acknowledged receipt of \$384,150.00
 10 deposited by the Defendants to account for the funds added to the Judgment by this
 11 Court’s order of January 13, 2021. (Dkt. Nos. 350, 367). That same day, Defendants
 12 moved to discharge the Receiver, terminate the receivership, and enjoin the court-
 13 approved sale of Defendants’ radio stations, arguing that the Judgment was “now
 14 fully satisfied.” (Dkt. No. 369 at 3.) However, despite depositing with the Court
 15 funds sufficient to satisfy the Judgment in this matter (thus stopping any further
 16 interest accruing on the Judgment), Defendants have now refused Plaintiffs’ repeated
 17 requests to stipulate to the actual release of those funds to Plaintiffs. (Declaration of
 18 Sharon Mayo (“Mayo Decl.”) at ¶¶ 10–11; Declaration of Jackson Wagener
 19 (“Wagener Decl.”) at ¶¶ 11–12.) And because Plaintiffs have not yet been paid, the
 20 Judgment *has not yet been satisfied*. See *Wertheim, LLC v. Currency Corp.*, 35 Cal.
 21 App. 5th 1124, 1132–34 (2019) (deposit of funds with the Court by judgment debtor
 22 is a “satisfaction” only for purposes of stopping the accrual of interest; “satisfaction
 23 [of the judgment] requires payment”).

24 This Court denied Defendants’ motion to discharge the Receiver on March 18,
 25 2021, finding that “neither the legal nor the factual equities” favor terminating the
 26 receivership at this juncture in the case, as Defendant Stolz “simply cannot [be]
 27 trust[ed]” on his own to “satisfy amounts due in the future.” (Dkt. No. 413 at 3.)
 28

1 Defendants have since filed an “emergency” appeal to the Ninth Circuit of this
2 Court’s order denying their motion to discharge the receiver.

3 Until the Judgment actually is satisfied and Plaintiffs are *actually paid* all
4 amounts that they are owed, Plaintiffs must continue to participate in the litigation by
5 opposing Defendants’ *seriatim* baseless filings. Defendants’ attempts from October
6 15, 2020 onwards to interfere with the Receiver’s duties and frustrate the sale of these
7 stations has necessitated further briefing from Plaintiffs, the Receiver, and other
8 interested parties (*e.g.*, Dkt. Nos. 335, 354, 356, 360, 361, 365, 373, 376, 377, 378,
9 389, 398, 400, 401, 403, 405, 406). It has also required Plaintiffs’ continued
10 appearance at Court hearings regarding Defendant Stolz’s ongoing antics to frustrate
11 the Receiver’s court-approved sale of the radio stations—to ensure that Defendants’
12 do not undercut Plaintiffs’ right to payment on the Judgment. Each of these hearings
13 has lasted anywhere from one to three hours, as the Receiver and Receiver’s counsel
14 painstakingly has attempted to extract information from Defendant Stolz under oath
15 that should have been provided willingly—and without fanfare—long ago. Because
16 Plaintiffs must continue to respond to, monitor, and, where necessary, oppose
17 Defendants’ efforts to terminate the receivership before its purpose is effectuated,
18 Plaintiffs have been forced to incur significant additional costs.

19 **III. PLAINTIFFS’ POST-JUDGMENT COSTS, INCLUDING**

20 **REASONABLE ATTORNEYS’ FEES, SHOULD BE AWARDED**

21 **A. Plaintiffs May Recover Costs, Including Reasonable Attorney’s** 22 **Fees, Incurred in Enforcing the Judgment**

23 Rule 69(a)(1) of the Federal Rules of Civil Procedure “provides for application
24 of state law *procedure* for judgment enforcement proceedings [but] states that ‘a
25 federal statute governs to the extent it applies.’” *Odnil Music Ltd. v. Katharsis LLC*,
26 No. CIV S-05-0545 WBS EFB PS, 2008 WL 958109, at *2 (E.D. Cal. Apr. 8, 2008).
27 In California, the procedure for judgment enforcement proceedings is governed by
28 the Enforcement of Judgments Law (“EJL”), codified in sections 680.010 through

1 724.260 of the California Code of Civil Procedure. *Imperial Bank v. Pim Elec., Inc.*,
 2 33 Cal. App. 4th 540, 546 (1995) (citing statute).

3 Under the EJJ, a judgment creditor is entitled to the “reasonable and necessary
 4 costs” incurred in enforcing a judgment, including attorney's fees if “otherwise
 5 provided by law.” Cal. Civ. Proc. Code § 685.040; *also Carnes v. Zamani*, 488 F.3d
 6 1057, 1060 (9th Cir. 2007) (“Recoverable costs may include attorney fees incurred in
 7 enforcing the judgment when, as here, the prevailing party was entitled to attorney
 8 fees in the underlying action.”); *Berti v. Santa Barbara Beach Props.*, 145 Cal. App.
 9 4th 70, 77 (2006) (“Code of Civil Procedure section 685.040 authorizes postjudgment
 10 fees provided by law”). “The express purpose of the 1992 amendment to section
 11 685.040 [of the California Code of Civil Procedure] was to provide for postjudgment
 12 attorney fees incurred in enforcing the judgment, thus abrogating [a prior] holding,
 13 which deprived a creditor of fees incurred in state and federal courts.” *Chinese*
 14 *Yellow Pages Co. v. Chinese Overseas Mktg. Serv. Corp.*, 170 Cal. App. 4th 868, 881
 15 (2008).

16 Section 505 of the Copyright Act provides for the recovery of such costs and
 17 fees. That statute provides that “the court in its discretion may allow the recovery of
 18 full costs by or against any party [and] may also award a reasonable attorney's fee to
 19 the prevailing party as part of the costs.” 17 U.S.C. § 505. As a matter of course,
 20 “full costs” include entitlement to post-trial litigation expenses. *See TVT Records v.*
 21 *Island Def Jam Music Group*, 288 F. Supp. 2d 506, 511 (S.D.N.Y. 2003), *reversed*
 22 *and remanded on other grounds*, 412 F.3d 82 (2d Cir. 2005); *also Girlsongs &*
 23 *Warner Bros., Inc. v. Starkey*, 108 F.R.D. 275, 278–79 (N.D. Cal.1984) (post-
 24 judgment costs and fees awarded via “supplemental” motion); *Somerset Songs Pub.*
 25 *v. Bertson*, No. 92 C 3302, 1992 WL 407297, at *1 (N.D. Ill. Sept. 11, 1992) (same);
 26 *Hamstein Music Co. v. Bait Shack, Inc.*, No. 00-4099-RDR, 2001 WL 709402, at *2
 27 (D. Kan. May 17, 2001) (same).

1 Plaintiffs are prevailing parties in the underlying copyright infringement action.
 2 As a result, they are entitled under the EIL and Section 505 of the Copyright Act to
 3 recover their full costs incurred post-judgment, including their attorneys' fees.

4 **B. Plaintiffs are Entitled to Their Attorneys' Fees Because They Are**
 5 **the Prevailing Parties**

6 Pursuant to section 505 of the Copyright Act, "the court in its discretion may
 7 allow the recovery of full costs by or against any party," including "a reasonable
 8 attorney's fee to the prevailing party as part of the costs." 17 U.S.C. § 505. Whether
 9 to award attorneys' fees is committed to the court's discretion. *Fogerty v. Fantasy,*
 10 *Inc.*, 510 U.S. 517, 534 (1994). Section 505 "grants courts wide latitude to award
 11 attorney's fees based on the totality of circumstances in a case." *Kirtsaeng v. John*
 12 *Wiley & Sons, Inc.*, 136 S. Ct. 1979, 1985 (2016). The Supreme Court has held that a
 13 prevailing plaintiff under a statute so worded "should ordinarily recover an attorney's
 14 fee unless special circumstances would render such an award unjust." *Hensley v.*
 15 *Eckerhart*, 461 U.S. 424, 429 (1983) (citation and internal quotation marks omitted).
 16 When "deciding whether to award fees under the Copyright Act, the district court
 17 should consider, among other things: the degree of success obtained on the claim;
 18 frivolousness; motivation; objective reasonableness of factual and legal arguments;
 19 and need for compensation and deterrence.'" *VMG Salsoul, LLC v. Ciccone*, 824
 20 F.3d 871, 887 (9th Cir. 2016) (quoting *Maljack Prods., Inc. v. GoodTimes Home*
 21 *Video Corp.*, 81 F.3d 881, 889 (9th Cir. 1996)).

22 An award of attorneys' fees is especially appropriate in cases like this that
 23 involve willful and intentional copyright infringement by unauthorized public
 24 performance. *See, e.g., Range Road Music, Inc. v. East Coast Foods, Inc.*, 668 F.3d
 25 1148, 1155 (9th Cir. 2012) (upholding an award of costs and fees where "much of the
 26 fees and costs were occasioned by [the defendants'] obfuscation" on issues of fact);
 27 *Chi-Boy Music v. Charlie Club, Inc.*, 930 F.2d 1224, 1227, 1230 (7th Cir. 1991)
 28 (plaintiffs awarded attorneys' fees of \$48,633.37 following trial); *Odnil Music v.*

1 *Katharsis, LLC*, 2006 Copyright L. Dec. (CCH) ¶ 29,222 (E.D. Cal. 2006),
 2 Memorandum and Order Re: Attorneys’ Fees and Costs, Case No. 2:05-cv-00545-
 3 WBS-EFB (Dkt. No. 194-1, Ex. 10) (following trial at which plaintiffs were awarded
 4 statutory damages of \$12,000, the court awarded plaintiffs costs, including attorneys’
 5 fees totaling \$73,545.52); *MOB Music Pub. v. Zanzibar on the Waterfront, LLC*, 698
 6 F.Supp.2d 197, 208–09 (D.D.C. 2010) (granting plaintiffs’ motion for summary
 7 judgment, the court awarded statutory damages of \$40,000, and costs including
 8 attorneys’ fees of \$74,712.22).

9 On at least two occasions, this Court has already found that Plaintiffs have
 10 been entitled to attorneys’ fees as the prevailing party in this case. On July 9, 2018,
 11 this Court declared:

12 Overall, the Court finds the *Fogerty* factors weigh in favor of awarding
 13 Plaintiffs attorneys’ fees. . . . Plaintiffs achieved a moderate degree of success,
 14 some of Defendants’ positions were unreasonable, there is no evidence of
 15 Plaintiffs’ improper motive in bringing the action, and awarding fees will
 16 discourage Defendants and others from infringing. These findings underscore
 the fact the conclusion that awarding fees will further the goals of the
 Copyright Act. The Court exercises its discretion and will award Plaintiffs
 attorneys’ fees.

17 (Dkt. No. 200 at 6.).

18 And on November 20, 2020, in the course of granting Plaintiffs’ request for
 19 post-judgment attorneys’ fees and costs incurred through October 14, 2020, this
 20 Court again “determine[d] that Plaintiffs are owed some amount of attorneys’ fees”
 21 and declined to reduce the amount of fees sought by Plaintiffs, finding that Plaintiffs’
 22 billing rates were reasonable, the few block-billed time entries did not appear
 23 inflated, and no Ninth Circuit or in-circuit district court authority supported
 24 Defendants’ argument that in-house counsel fees were unrecoverable (Dkt. No. 337 at
 25 3–4.)

26 The *Fogerty* factors remain in favor of awarding attorneys’ fees to Plaintiffs,
 27 especially in light of the extensive motion practice and extraordinary relief required
 28 to execute on the Judgment.

C. The Amount of Attorneys' Fees Plaintiffs Seek to Recover is Reasonable

Since October 15, 2020 Plaintiffs have incurred no less than \$107,523.20 in additional fees to enforce their Judgment. Plaintiffs' fee request is reasonable in light of the market value of the attorney services rendered and the intense activity of the case. The amount of fee award is determined by applying the "lodestar" formula, which multiplies the number of hours reasonably expended on litigation by a reasonable hourly rate for each attorney. *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). The lodestar figure is presumed to be reasonable, but can be adjusted upwards or downwards by other factors not represented in the lodestar figure. *Morales v. San Rafael*, 96 F.3d 359, 363 n.8 (9th Cir. 1996). "Only in rare instances should the lodestar figure be adjusted on the basis of other considerations." *Harris v. Marhoefer*, 24 F.3d 16, 18 (9th Cir. 1994).

Plaintiffs' request for attorneys' fees is reasonable because they employed well-qualified lawyers who spent a reasonable and necessary number of hours at competitive hourly rates charged by comparable law firms to pursue this case:

- Sharon D. Mayo is a senior counsel at Arnold & Porter Kaye Scholer LLP ("Arnold & Porter"), with 29 years of experience litigating copyright cases. Plaintiffs seek to recover for 34.3 hours of her time on this case for a total amount of \$50,350.05.
- Laura E. Watson is a mid-level associate at Arnold & Porter. Plaintiffs seek to recover for 39.6 hours of her time on this case for a total amount of \$27,878.40.
- Cassandra E. Havens is a former mid-level associate at Arnold & Porter. Plaintiffs seek to recover for 18.5 hours of her time on this case for a total amount of \$11,238.75.
- Jackson Wagener has more than 15 years of experience litigating intellectual property matters. He was formerly an associate at the law

1 firms of Weil, Gotshal & Manges LLP, and Greenberg Traurig, LLP, in
 2 New York, New York, and has been with ASCAP since 2014, currently
 3 as Senior Vice President, Business and Legal Affairs. Plaintiffs seek to
 4 recover for 24.4 hours of his time on this case for a total amount of
 5 \$18,056.00.²

6 (Mayo Decl. ¶¶ 12–14, 16–19, Exs. A, D–F; Wagener Decl. ¶¶ 1–10, Ex. A.)

7 **1. The Requested Rates Are Reasonable**

8 Courts awarding fees determine the reasonable rate for attorney time by
 9 reference to the attorney's regular billing rate and the market rate for attorneys of
 10 comparable skill and experience. *Gay Officers Action League v. Puerto Rico*, 247
 11 F.3d 288, 293, 295 (1st Cir. 2001). The hourly rates that Plaintiffs request for the
 12 time of the Arnold & Porter attorneys and Mr. Wagener are reasonable in relation to
 13 the hourly rate prevailing in Los Angeles and San Francisco for similar work
 14 performed by attorneys of similar experience at competitive national law firms. The
 15 reasonableness of the requested rates is further evidenced by steps taken by counsel
 16 to reduce costs by pushing work down to more junior members of the firm. This
 17 Court has previously found the requested hourly rates reasonable (Dkt. Nos. 200 at 6–
 18 8, 337 at 4), and any modest increases in the three years since the verdict was issued
 19 remain reasonable.

20 A reliable source of publicly-available information on rates is a recent report
 21 on 2017 billing rates published in *The National Law Journal*. (Mayo Decl. ¶ 21, Ex.
 22 G.) In the *National Law Journal* survey, Arnold & Porter's rates compare favorably
 23 with two other large firms listed therein with primary offices in California: Cooley

24
 25 ² It is entirely appropriate for Plaintiffs to seek attorneys' fees for Mr. Wagener's
 26 work on this case. *See Unicom Sys., Inc. v. Farmers Group Inc.*, No. CV 04-04604
 27 AJW, 2009 WL 10670614 at *6 (C.D. Cal. June 29, 2009) (awarding \$243,112.50 in
 28 fees incurred by in-house counsel); *also BMI v. R. Bar of Manhattan, Inc.*, 919 F.
 Supp. 656, 661 (S.D.N.Y. 1996) (awarding attorneys' fees to in-house counsel at
 performance rights organization). This Court previously approved a rate of \$740.00
 per hour for the work performed by Mr. Wagener in this matter. (Dkt. Nos. 200 at 7–
 8, 337 at 4.)

1 LLP (Partners: Average \$1,100, Associates: \$595-\$835) and Sheppard, Mullin,
 2 Richter & Hampton (Partners: Average \$760, Associates: \$585-\$630). (*Id.* ¶ 21.)
 3 Plaintiffs’ requested rates also fall within the range of other comparable national law
 4 firms with substantial offices in California listed in the National Law Journal article,
 5 including those specifically mentioned in the Mayo Declaration. (*Id.* ¶ 22.)

6 In addition, the fees requested for ASCAP’s in-house counsel are reasonable.
 7 As the Southern District of New York explained, “[a]ttorney’s fees may be awarded
 8 for the work of in-house counsel, and an hourly rate based on an estimate of the fee
 9 charged by independent counsel for similar services can provide a reasonable basis
 10 for calculating such an award if other relevant criteria are satisfied.” *R. Bar*, 919 F.
 11 Supp. at 661; *see Unicom*, 2009 WL 10670614 at *6 (awarding fees for in-house
 12 counsel’s work). This Court has already found that an hourly rate of \$740.00 for Mr.
 13 Wagener’s work is reasonable. (Dkt. Nos. 200 at 7–8, 337 at 4.)

14 **2. The Number Of Hours Expended By Attorneys Is Reasonable**

15 The number of hours expended by Arnold & Porter is reasonable in light of
 16 Defendants’ conduct during the post-judgment enforcement period. As explained
 17 above, Defendants’ ongoing dilatory and obstructionist conduct has required
 18 extensive briefings and appearances before this Court since October 15, 2020, as
 19 Defendants have sought to delay completion of the court-approved sale of their radio
 20 stations, while simultaneously refusing to release the funds that they deposited with
 21 the Court to Plaintiffs, as they must do in order to fully satisfy the Judgment.
 22 Plaintiffs have incurred significant expenses in enforcing the Judgment and
 23 addressing Defendants’ delaying tactics and meritless motion practice.

24 Defendants should not be heard to complain that the requested fees are high or
 25 unnecessary—it is due to Defendants’ own conduct that such fees have been incurred.
 26 Had Defendants made a good-faith attempt to pay the outstanding sums due to
 27 Plaintiffs and various other interested parties in a timely fashion, these proceedings
 28 would have likely been resolved months, or even years, ago. Instead, Plaintiffs have

1 continued to drag out the enforcement process for over two years, including over the
2 past five months since Plaintiffs previously moved for post-judgment costs and fees.

3 Defendants have only themselves to blame for the magnitude of the expense
4 incurred by Plaintiffs in litigating to vindicate their copyright rights. *See, e.g.,*
5 *Comtys. for Equity v. Mich. High Sch. Athletic Assoc.*, No. 1:98-CV-479, 2008 WL
6 906031, at *16 (W.D. Mich. Mar. 31, 2008) (“[Defendant] cannot choose to ‘litigate
7 tenaciously and then be heard to complain about the time necessarily spent by
8 plaintiff in response.’ The time required to litigate increases when the defendant
9 bitterly contests the case, forcing the plaintiffs to win their victory from ‘rock to rock
10 and from tree to tree.’” (quoting *City of Riverside v. Rivera*, 477 U.S. 561 (1986), and
11 *Lipsett v. Blanco*, 975 F.2d 934, 939 (1st Cir. 1992))); *Frank Music Corp. v. Metro-*
12 *Goldwyn-Mayer Inc.*, 886 F.2d 1545, 1557 (9th Cir. 1989) (“Time spent by plaintiffs’
13 counsel responding to motion or actions by the defendants should not be excluded
14 from the fee award. Although defendants had the right to play hardball in contesting
15 plaintiffs’ claims, it is also appropriate that defendants bear the cost of their
16 obstructionist strategy.”) (quotations and alterations omitted).

17 **D. Plaintiffs Are Entitled To All Other Costs**

18 Under the EJP, Plaintiffs may claim the costs specified in Section 685.070 of
19 the California Code of Civil procedure *as a matter of right*. These include, for
20 example, attorney's fees as provided by statute. *See* Cal. Civ. Proc. Code §§ 685.070,
21 685.040. Pursuant to Section 685.070(b), Plaintiffs have filed an accompanying
22 Memorandum of Costs to recover their attorneys’ fees. (Mayo Decl. ¶ 15, Ex. C.)

23 Plaintiffs may also recover all other enforcement costs by this noticed Motion.
24 Cal. Civ. Proc. Code §§ 685.040, 685.080. In this respect, the EJP is consistent with
25 Section 505 of the Copyright Act, which allows “the recovery of *full costs*” by the
26 prevailing party in a copyright infringement action.³ 17 U.S.C. § 505 (emphasis

27
28 ³ “[T]o the extent Cal. Civ. Proc. Code § 685.040 conflicts with § 505 of the
Copyright Act, federal law governs.” *Odnal*, 2008 WL 958109, at *2.

1 added). Plaintiffs' other costs include \$308.66, which includes duplicating and print
2 jobs, courier and overnight delivery fees, and transcript fees. (Mayo Decl. ¶ 15, Ex.
3 B.)

4 Accordingly, to make Plaintiffs whole, the Court should award them post-
5 judgment costs in the amount of \$306.88.

6 **IV. CONCLUSION**

7 For the foregoing reasons, the Court should award Plaintiffs their full costs,
8 including reasonable attorneys' fees, incurred in enforcing the Judgment in this
9 matter since October 15, 2020, in the total amount of \$107,831.86, or in an amount
10 the Court deems is proper under the circumstances.

11
12 Dated: April 9, 2021

ARNOLD & PORTER KAYE SCHOLER LLP

13
14 By: /s/ Sharon D. Mayo
15 Sharon D. Mayo

16 JACKSON WAGENER (*pro hac vice*)
17 American Society of Composers, Authors and
18 Publishers

19 Attorneys for Plaintiffs
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